

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

KAREN WHITE,

Plaintiff,

v.

BMW OF NORTH AMERICA, LLC,

Defendant.

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Civil Action No. 3:12-cv-115

**BMW OF NORTH AMERICA, LLC'S ANSWER
TO PLAINTIFF'S AMENDED COMPLAINT**

BMW of North America, LLC ("BMW NA"), through its undersigned counsel, by way of Answer to Plaintiff's Amended Complaint, says as follows:

As to "Preliminary Statement"

1. BMW NA admits that Plaintiff purports to bring this action as described in the Amended Complaint. BMW NA denies the claims alleged have merit.

As to "Jurisdiction"

2. BMW NA acknowledges that the Magnuson-Moss Warranty Act confers jurisdiction on this Court where the amount in controversy is in excess of \$50,000. BMW NA acknowledges that this Court may exercise supplemental jurisdiction over supplemental state-law claims. BMW NA denies the remaining allegations made in this paragraph.

3. BMW NA admits that diversity of citizenship exists. BMW NA denies the remaining allegations made in this paragraph.

As to “Parties”

4. Upon information and belief, BMW NA admits that Plaintiff is a citizen of the Commonwealth of Virginia. BMW NA denies the remaining allegations made in this paragraph.

5. BMW NA admits that it does business and distributes motor vehicles to dealerships in the Commonwealth of Virginia. BMW NA denies the remaining allegations made in this paragraph.

As to “Facts”

6. Upon information and belief, BMW NA admits the allegations in this paragraph.

7. BMW NA admits that Plaintiff’s vehicle was provided with a New Passenger Vehicle Limited Warranty. BMW NA denies the remaining allegations made in this paragraph.

8. BMW NA denies the allegations made in this paragraph.

9. BMW NA denies the allegations made in this paragraph, including its subparts.

10. BMW NA denies the allegations made in this paragraph.

11. Upon information and belief, BMW NA admits the allegations in this paragraph.

12. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies the allegations made in this paragraph.

13. BMW NA admits that Plaintiff filed a prior action in Virginia state court asserting violation of the Magnuson-Moss Warranty Act and the Virginia Motor Vehicle Warranty Enforcement Act.

14. BMW NA admits the allegations in this paragraph.

15. BMW NA denies the allegations made in this paragraph.

16. BMW NA denies the allegations made in this paragraph.

17. BMW NA denies the allegations made in this paragraph.

18. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies the allegations made in this paragraph.

19. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies the allegations made in this paragraph.

20. BMW NA denies the allegations made in this paragraph.

21. BMW NA denies the allegations made in this paragraph.

22. BMW NA denies the allegations made in this paragraph.

23. BMW NA denies the allegations made in this paragraph.

As to “Count One: Federal Magnuson-Moss Act, 15 U.S.C. § 2310”

24. BMW NA denies the allegations made in this paragraph.

25. BMW NA denies the allegations made in this paragraph.

26. BMW NA denies the allegations made in this paragraph.

27. BMW NA denies the allegations made in this paragraph.

28. BMW NA denies the allegations made in this paragraph.

29. BMW NA states that the allegations contained in this paragraph constitute conclusions of law to which no response is required. If the Court finds that a response is required, BMW NA denies the allegations in this paragraph.

As to “Count Two: Virginia Lemon Law, Va. Code § 59.1-207.9”

30. BMW NA denies the allegations made in this paragraph.

31. BMW NA states that the allegations contained in this paragraph constitute conclusions of law to which no response is required. If the Court finds that a response is required, BMW NA denies the allegations in this paragraph.

AS TO THE PRAYER FOR RELIEF

BMW NA denies that Plaintiff is entitled to any of the relief she seeks.

GENERAL DENIAL

BMW NA denies all allegations not specifically admitted above.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

To the extent Plaintiff alleges a defect, the alleged defect has been cured, or Plaintiff failed to give timely notice and/or a reasonable opportunity to cure.

SECOND SEPARATE DEFENSE

Plaintiff's claims, or some of them, are barred by the applicable statute of limitations.

THIRD SEPARATE DEFENSE

The alleged damages, if any, were caused by the actions or inactions of persons over whom BMW NA exercised no control.

FOURTH SEPARATE DEFENSE

The asserted claims are barred to the extent that there is no legal injury, including no injury to persons who leased or purchased the vehicles in question and experienced no problems or, if they experienced problems, those problems were resolved under warranty.

FIFTH SEPARATE DEFENSE

Any claims for damages or other monetary recovery by Plaintiff must be offset and reduced by the value received from the vehicles purchased or leased.

SIXTH SEPARATE DEFENSE

Plaintiff has failed to mitigate her damages.

SEVENTH SEPARATE DEFENSE

Plaintiff may be barred, in whole or in part, from recovery because she has made statements or taken actions which estops her from asserting her claims.

EIGHTH SEPARATE DEFENSE

The asserted claims are barred to the extent any injury sustained by Plaintiff was caused by her negligent conduct. Further, to the extent Plaintiff misused, abused, and/or failed properly to maintain the vehicle, she is barred, in whole or in part, from recovery.

NINTH SEPARATE DEFENSE

To the extent Plaintiff's vehicle has been altered, she is barred, in whole or in part, from recovery.

TENTH SEPARATE DEFENSE

To the extent Plaintiff's vehicle has been sold, destroyed, or otherwise disposed of, she may be barred, in whole or in part, from recovery.

ELEVENTH SEPARATE DEFENSE

Plaintiff may be barred from recovery, in whole or in part, if in this or other courts she has brought actions and has received judgments, on parts of some or all claims asserted herein.

TWELFTH SEPARATE DEFENSE

Plaintiff may not seek equitable relief because she has an adequate remedy at law.

THIRTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred to the extent that she engaged in unlawful, inequitable or improper conduct.

FOURTEENTH SEPARATE DEFENSE

This Defendant presently has insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unstated, defenses that govern the claims asserted by Plaintiff.

WHEREFORE, Defendant BMW of North America, LLC prays that:

1. Plaintiff be awarded no relief of any sort;
2. Judgment be entered in favor of BMW of North America, LLC;
3. Costs and fees be awarded in favor of BMW of North America, LLC; and
4. For such other and further relief as the court deems appropriate.

AS TO THE DEMAND FOR A TRIAL BY JURY

Defendant BMW NA denies that Plaintiff is entitled to a trial by jury on some or all of her claims.

June 1, 2012

/s/ Rachel Elsby
Rachel Elsby, Esq. (VSB # 81389)
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*Attorneys for Defendant,
BMW of North America, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of June 2012, I electronically filed the foregoing
BMW OF NORTH AMERICA, LLC'S ANSWER TO PLAINTIFF'S AMENDED
COMPLAINT with the Clerk of Court using the CM/ECF system which will send notification of
such filing via Notification of Electronic Filing (NEF) to the following:

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